

Decision 16-11-019 November 10, 2016

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Whether to Adopt, Amend, or Repeal Regulations Governing the Award of Intervenor Compensation.	Rulemaking 14-08-020 (Filed August 28, 2014)
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DECISION GRANTING COMPENSATION TO THE CENTER FOR BIOLOGICAL DIVERSITY FOR CONTRIBUTION TO DECISION 16-08-025

Intervenor: Center for Biological Diversity	For contribution to Decision (D.) 16-08-025
Claimed: \$13,043.00	Awarded: \$12,540.50
Assigned Commissioner: Michael P. Florio	Assigned ALJ: Karl J. Bemserderfer

PART I: PROCEDURAL ISSUES

A. Brief description of Decision:	Adopting new Rule 17.5 requiring applicants for a Certificate of Public Convenience and Necessity - or other Commission action - who are not regulated public utilities subject to the jurisdiction of the Commission, to post a bond or equivalent security instrument sufficient to pay the anticipated costs of any related intervenor compensation awards.
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B. Intervenor must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812:

	Intervenor	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference (PHC):	Nov. 19, 2014	Verified
2. Other specified date for NOI:		
3. Date NOI filed:	Dec. 19, 2014	Verified
4. Was the NOI timely filed?		Yes
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	R. 14-08-020	Verified
6. Date of ALJ ruling:	Feb. 18, 2015	Verified

7. Based on another CPUC determination (specify):		
8. Has the Intervenor demonstrated customer or customer-related status?		Yes
Showing of “significant financial hardship” (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	R. 14-08-020	Verified
10. Date of ALJ ruling:	Feb. 18, 2015	Verified
11. Based on another CPUC determination (specify):		
12. Has the Intervenor demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	R. 14-08-020	R. 14-08-020
14. Date of issuance of Final Order or Decision:	Aug. 18, 2016	August 19, 2016
15. File date of compensation request:	Sept. 2, 2016	Sept. 02, 2016
16. Was the request for compensation timely?		Yes

PART II: SUBSTANTIAL CONTRIBUTION

A. Did the Intervenor substantially contribute to the final decision (*see* § 1802(i), § 1803(a), and D.98-04-059).

Intervenor’s Claimed Contribution(s)	Specific References to Intervenor’s Claimed Contribution(s)	CPUC Discussion
1. Accepting Center for Biological Diversity’s (CBD) suggestion and modifying “the proposed Rule to clarify that the form of the bond must be such as to satisfy the ALJ that it can in fact be drawn on to pay all anticipated intervenor compensation claims.”	<ul style="list-style-type: none"> • D.16-08-025 (8/18/2016) at 6. • Proposed Decision of Commissioner Florio (6/14/2016) at 6-7 • Assigned Commissioner’s Ruling Proposing and Soliciting Comments on Modifications to Text of Originally Proposed New Rule 17.5 (4/12/2016) at 2; • Assigned Commissioner’s Ruling Proposing and Soliciting Comments on Modifications to Text of Originally Proposed New Rule 17.5 (3/17/2016) at 1-2. 	Verified
2. CBD emphasized support and justification for Alternative 2, bonding or equivalent financial requirement, which was adopted by the CPUC in	<ul style="list-style-type: none"> • D.16-08-025 (8/18/2016) at 2, Appendix A. • Assigned Commissioner’s Ruling Proposing Changes to the Commission’s Rules of Practice and 	Verified

Intervenor's Claimed Contribution(s)	Specific References to Intervenor's Claimed Contribution(s)	CPUC Discussion
Rule 17.5.	<p>Procedure and Seeking Additional Public Comments (Mar. 13, 2015) at 2-4.</p> <ul style="list-style-type: none"> • Comments of the CBD (9/18/2014) at 6-9. • Prehearing Conference Statement of the CBD (11/10/2014) at 2-3. • Opening Brief of the CBD (1/23/2015) at 5-6. • Comments of the CBD on Proposed Changes to the Commission's Rules of Practice and Procedure (2/11/2016) at 3-5. • Comments of the CBD on the Proposed Decision (6/29/2016) at 3-5. 	
3. CBD provided fact finding support for the findings of fact that "[i]ntervenors who make substantial contributions to ratesetting proceedings in which there is no public utility subject to our jurisdiction risk not getting compensated" by explaining the Nevada Hydro proceeding that precipitated this rulemaking from a participating intervenor's perspective.	<ul style="list-style-type: none"> • D.16-08-025 (8/18/2016) at 8. • Comments of the CBD (9/18/2014) at 2-4. • Opening Brief of the CBD (1/23/2015) at 2-3. • Comments of the CBD on Proposed Changes to the Commission's Rules of Practice and Procedure (2/11/2016) at 2-3. • Comments of the CBD on the Proposed Decision (6/29/2016) at 2-3. 	Verified

B. Duplication of Effort (§ 1801.3(f) and § 1802.5):

	Intervenor's Assertion	CPUC Discussion
a. Was the Office of Ratepayer Advocates (ORA) a party to the proceeding?	No	Verified
b. Were there other parties to the proceeding with positions similar to yours?	Yes	Verified
c. If so, provide name of other parties: Consumer Federation of California (CFC), The Utility Reform Network (TURN), and Ratepayers of Lake Alpine Water Company		Verified

d. Intervenor’s claim of non-duplication:	Verified
<p>The Center for Biological Diversity coordinated with other affected parties such as CFC, TURN, and Southern California Edison (SCE) in order to coordinate efforts, avoid duplication, and note areas where multiple parties supported the same position. CBD Pre Hearing Conference Statement (filed Nov. 10, 2014) at 4. The parties also coordinated to support Alternative 2 and why it was superior, and the issues outlined by the CPUC, and hearing procedure proposed by the CPUC. <i>Id.</i> Finally, the parties coordinated a proposal for testimony, a hearing, and schedule. <i>Ibid.</i> at 5.</p> <p>Because the parties all had slightly varying opinions on this matter individual briefing was appropriate. The parties worked to assure their positions were not duplicative and provided individual perspectives. To the extent there was overlap, it was because the parties chose to emphasize a point that was unified across their varied interests. Where there may have been duplication on certain issues the Center for Biological Diversity’s arguments, analysis, factual support, and attachments supplemented, complemented, and contributed to the recommendation of another party. <i>See</i> Cal. Pub. Util. Code § 1802.5. The parties coordinated to urge the CPUC to not hold hearings or submit individual motions in order to maximize efficiency of the resources of the parties and the CPUC.</p>	

PART III: REASONABLENESS OF REQUESTED COMPENSATION

A. General Claim of Reasonableness (§ 1801 and § 1806):

a. Intervenor’s claim of cost reasonableness:	CPUC Discussion
<p>From the outset the claimant provided support and information regarding alternative 2, which later adopted by the CPUC. <i>See e.g.</i> Comments of the CBD (9/18/2014) at 6-9, Prehearing Conference Statement of the CBD (11/10/2014) at 2-3. In its final decision, the CPUC accepting CBD’s suggestion and modified “the proposed Rule to clarify that the form of the bond must be such as to satisfy the ALJ that it can in fact be drawn on to pay all anticipated intervenor compensation claims.” D.16-08-025 (8/18/2016) at 6. Claimant’s information regarding the experience in the proceedings that precipitated the rulemaking provided the CPUC with valuable background regarding the viability and basis for the rulemaking. For example claimant helped demonstrate how the establishment of the bonding requirement helped avoid the construction of a project that was the genesis of the rulemaking proceeding that would have potentially cost \$684 million in Project costs, (D.11-07036 at 2), which are far in excess of the compensation claims related to the proceedings.</p> <p>CBD’s participation benefits ratepayers by helping to assure that the Intervenor Compensation Program effectively allows a mechanism for “the program [to] be more effective in promoting consumer participation in today’s regulatory processes [and] ultimately broaden participation” by helping to assure that the ability for consumers and consumer advocates to participate in the CPUC process equally applies to non-public utilities or out of state companies. D.98-04-059 at 14. Because the rulemaking at question here is forward looking it is difficult to forecast the costs that would be saved by future intervenors’ benefits to the</p>	Verified

ratepayer proceeding for consumers. However, the ability of bonding requirement to promote and broaden “consumer participation” benefits the statutory purpose of the intervenor compensation program and ultimately the ratepayer by incentivizing the ability to advocate for lower rates, broader participation, and environmental protection.	
b. Reasonableness of hours claimed: Claimant has participated in the related proceedings by Nevada Hydro that spurred this Rulemaking since 2007, but is not seeking any reimbursement for those efforts here. Since the initiation of the current rulemaking proceeding, Claimant submitted 6 separate comments, filings, or briefs which provided substantial information and support for the CPUC during its decision making. Approximately 45 hours for a proceeding that lasted roughly three years resulted from CBD’s efforts to minimize the number of hours claimed in the proceeding.	Verified
c. Allocation of hours by issue: See Attachment 1- Allocation of Hours by Issue.	Verified

B. Specific Claim:*

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate \$	Total \$
April Sommer, attorney	2014	26.2	\$305	Resolution ALJ-329; Attachment 2	\$7,991	26.2	\$305.00 ^[A]	\$7,991.00
April Sommer, attorney	2015	4.5	\$320	Resolution ALJ-329; Attachment 2	\$1,440	4.5	\$320.00 ^[A]	\$1,440.00
April Sommer, attorney	2016	4.4	\$330	Resolution ALJ-329; Attachment 2	\$1,452	4.4	\$330.00 ^[A]	\$1,452.00
Subtotal: \$10,883.00						Subtotal: \$10,883.00		

INTERVENOR COMPENSATION CLAIM PREPARATION**								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$
Jonathan Evans, attorney	2016	11.4	\$175 (1/2 of \$350 rate)	Resolution ALJ-329; D.14-11-038; Attachment 2	\$2,077.50 ^[B]	9 ^[B]	\$175.00 ^[A]	\$1,575.00 ^[B]
April Sommer, attorney	2016	.5	\$165 (1/2 of \$330 rate)	Resolution ALJ-329; Attachment 2	\$82.50	0.5	\$165.00 ^[A]	\$82.50
Subtotal: \$2,160.00						Subtotal: \$1,657.50		
TOTAL REQUEST: \$13,043.00						TOTAL AWARD: \$12,540.50		
<p>*We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Intervenor's records should identify specific issues for which it seeks compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.</p> <p>**Travel and Reasonable Claim preparation time typically compensated at ½ of preparer's normal hourly rate</p>								
ATTORNEY INFORMATION								
Attorney		Date Admitted to CA BAR ¹		Member Number		Actions Affecting Eligibility (Yes/No?) If “Yes”, attach explanation		
April Sommer		December 2008		257967		No		
Jonathan Evans		December 2006		247376		No		

D. CPUC Disallowances and Adjustments:

Item	Reason
A	Center for Biological Diversity requests a rate of \$305.00 per hour, \$320.00 per hour, and \$330.00 per hour for Sommer's work in 2014, 2015, and 2016. Sommers has eight years of experience as of 2016. The Commission finds the requested rates reasonable for Sommers, after application of rate increases. Evans now has ten years of experience, and is in the 8-12 years experience bracket. The Commission finds reasonable a rate of \$335.00 per hour for Evans in 2016.
B	For a short seven page claim, 11.9 hours of preparation time is excessive. Evans

¹ This information may be obtained through the State Bar of California's website at <http://members.calbar.ca.gov/fal/MemberSearch/QuickSearch>.

Item	Reason
	preparation hours are reduced by 2.4. Additionally, Center for Biological Diversity miscalculated it's compensation request. The correct total for Evans was \$1,995.00.

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the Claim?	No
B. Comment Period: Was the 30-day comment period waived (<i>see</i> Rule 14.6(c)(6))?	Yes

FINDINGS OF FACT

1. Center for Biological Diversity has made a substantial contribution to Decision 16-08-025.
2. The requested hourly rates for Intervenor's representatives, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The claimed costs and expenses, as adjusted herein, are reasonable and commensurate with the work performed.
4. The total of reasonable compensation is \$12,540.50.

CONCLUSION OF LAW

1. The Claim, with any adjustment set forth above, satisfies all requirements of Pub. Util. Code §§ 1801-1812.

ORDER

1. Center for Biological Diversity shall be awarded \$12,540.50.
2. Within 30 days of the effective date of this decision, the Commission's Intervenor Compensation Fund shall pay Center for Biological Diversity the total award. Payment of the award shall include compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning November 16, 2016, the 75th day after the filing of Center for Biological Diversity's request, and continuing until full payment is made.

3. The comment period for today's decision is waived.
4. This decision is effective today.

Dated November 10, 2016, at San Francisco, California.

MICHAEL PICKER

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

CARLA J. PETERMAN

LIANE M. RANDOLPH

Commissioners

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:	D1611019	Modifies Decision?	
Contribution Decision(s):	D1608025		
Proceeding(s):	R1408020		
Author:	ALJ Bemederfer		
Payer(s):	CPUC Intervenor Compensation Fund		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Center for Biological Diversity	August 26, 2016	\$13,043.00	\$12,540.50	N/A	Excessive Claim Preparation Hours; Misaccounting of Hours

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
April	Sommer	Attorney	Center for Biological Diversity	\$305	2014	\$305
April	Sommer	Attorney	Center for Biological Diversity	\$320	2015	\$320
April	Sommer	Attorney	Center for Biological Diversity	\$330	2016	\$330
Jonathan	Evans	Attorney	Center for Biological Diversity	\$350	2016	\$350

(END OF APPENDIX)